

# Access to justice and climate-related disasters: Do we need “disaster justice”?

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The world is experiencing an increasing number of disasters, both those caused by natural hazards and those linked to human activities, and this fact renders cooperation and coordination at the international level more and more important in the field of disaster (risk) management. Although it is a subject that has been actively discussed at the international level, available remedies in current international law for individuals affected by disasters are still limited. This blogpost analyses currently available but limited remedies in international law for individuals affected by climate-related disasters.

Damage suffered by persons affected by disasters are diverse and require a case-by-case analysis. The possibility of resorting to justice ought to be included in this reflection. In theory, there has been no instrument that individuals can automatically invoke in the context of disasters. However, given the fact that individuals have been able to bring essentially environmental claims before human rights complaints procedures (see e.g. [Stephens](#)), this must also be the case for persons affected by disasters. Even though disaster-related cases are not the same as mere “environmental cases”, it has been possible to take legal rights-based actions in relation to disasters before human rights courts (or other judicial bodies accepting individual claims).

While [Disaster Law](#) has been gradually established as a new branch [at the international level](#), international human rights courts, including the European Court of Human Rights (ECtHR), have not yet dealt with enough cases to establish a distinct case-law on disaster-related matters, especially on climate hazards (see [here](#)). However, given the actual (adverse) impacts of climate change on human societies, courts will inevitably encounter more cases in the distinct field of disaster.

## Climate change and disasters

The studies on climate change (cf. definition in [Article 1](#) of the United Nations Framework Convention on Climate Change) and the management of disasters caused by natural hazards have long been treated separately. However, given the increasing number of disasters related to climate events, it has become more crucial to incorporate aspects of climate change adaptation into disaster risk management (see [here](#)).

The hazards linked to natural phenomena of the Earth (e.g. those which cause earthquakes or volcanic eruptions as a result) are normally considered to be beyond human control, but as to natural hazards deriving from currently ongoing climate

change, it is possible to manage the outcomes, or at least to predict the types of disaster which could occur in the future. Indeed, “there is no such thing as a *natural* disaster”, since a disaster never happens “naturally”. This is based on the idea that a natural event only becomes a disaster when societies exposed to such a risk are not capable of managing it (“vulnerability”; see [here](#)). Behind each disaster lies the inaction and/or inability of a particular society to manage the outcomes of such an event, including the inadequacy or ineffectiveness of the measures taken by the authorities concerned.

For international courts, it would still be audacious to consider climate change as a component of disaster which will consequently cause violation of human rights (cf. the ECtHR uses the expression “natural disaster” in climate hazard cases). In this regard, the decisions taken by Dutch courts in the [Urgenda Climate Case](#), particularly [that of the Dutch Supreme Court on 20 December 2019](#), are notable in the sense that the Court has elaborated on the government’s obligation to cut greenhouse gas emissions in relation to climate change in the human rights context while mentioning its potential risks for causing disasters (see on this case [Spijkers’ contribution](#) to this symposium). This case, which attracted considerable attention globally, was “the first in the world in which citizens established that their government has a legal duty to prevent dangerous climate change” (cf. [Urgenda](#)). Although it is merely a national court’s decision, its arguments regarding the link between climate change and disasters from the viewpoint of ECHR are worth considering even at the international level.

Today, the importance of “environmental justice” seems to have been sufficiently recognised in the international community (cf. the right of access to justice in [the Aarhus convention](#)). While disaster-related issues may fall within the scope of environmental law, environmental law does not cover all stages (before/during/after) of disasters and disaster-related cases require specific analysis which are not always common in other environmental matters. Then, why would we not start to emphasise the need of “disaster justice”?

## **Rights of persons affected by disasters under the ECHR**

The ECtHR requires States to fulfil their obligation to ensure the rights and freedoms guaranteed by [the ECHR](#) even in the event of a disaster resulting from a natural event that is not necessarily foreseeable nor directly connected with States’ activities ([Budayeva and Others v. Russia](#)). The rights which may be at stake in the event of disasters are, by the nature of disasters, the right to life (Article 2), the right to respect for private and family life (Article 8) or the protection of property (Article 1 of Protocol No. 1). When at least one of these rights is at stake, individuals should be able to commence judicial or administrative proceedings first at the domestic level. The right of access to justice under the ECHR is indeed guaranteed by the right to a fair trial (Article 6) and the right to an effective remedy (Article 13) (viz. [Golder v. the United Kingdom](#)).

As it can be deduced from the cited case-law, States cannot use the “naturalness” of such events to deny their obligations to ensure individuals’ rights. Although some hazards occur randomly, the regular occurrence of such events has been identified

in some areas, given the local meteorological (e.g. [Kolyadenko and Others v. Russia case](#)) or geological features (e.g. Japan is situated on/near the boundary of four tectonic plates, which is likely to cause a considerable number of earthquakes). In such cases, the authorities concerned are required to fulfil their obligations under human rights law by taking well-planned measures to prevent the same type of hazard from generating a similar disaster again. If a disaster occurs and leaves significant damages despite of the disaster risk identified previously, the risk management was probably insufficiently or incorrectly conducted. In such situations, authorities have an obligation to offer remedies for enabling people to enjoy their rights (cf. in [Kolyadenko case](#), the incorrect measures taken by Russian authorities in relation to the risk of flooding during the rainy season, releasing water from the reservoir into the river, have been considered as “dangerous activities”, but not in the context of disaster risk management).

### **‘Access to justice’ as a tool of disaster risk reduction**

Given the adverse impacts of climate change, we may be subject to a new type or different types of disaster(s) in the future. It is not easy to have a concrete plan to prepare against disaster risks that have not yet been identified or experienced, but a disaster should not make the affected persons more vulnerable to future disaster risks. Judicial procedures may reveal deficiencies or other challenges in authorities’ plans for risk reduction or reconstruction for affected societies. Access to justice not only offers individual remedies but also plays the role of “public control” in disaster risk management.

Some affected persons consider remedies or compensations conceded to “disaster victims” in the post-disaster period a sort of “gift” by the authorities (particularly in countries where private insurance prevails; personally, I have observed this situation in Japan). Such an understanding challenges the mere intention of raising an objection or accusing governments for inefficiency or insufficiency of the measures taken. Administrative acts, whether called “support” or not, should also be subject to public investigation or examination. Resorting to justice may be an element for improving disaster risk management and indirectly reduce future risks. Regardless of the existence of obligations under Human rights instruments, States must take sufficient measures in this regard.

### **Derogation from Human rights treaties due to a disaster**

Amid the Coronavirus outbreak it seems inevitable to mention the derogation from Human rights treaties in emergency situations (cf. [here](#)). Although it is still uncertain whether the ongoing pandemic should be considered as a disaster akin to those caused by natural hazards such as hurricanes, we may argue that an epidemic/pandemic crisis amounts to a disaster within the broad meaning of [the ILC’s draft articles](#) (cf. [here](#)). It is noteworthy that among the derogation notifications currently made by states, Estonia is the only state derogating from the right to a fair trial under [the ECHR](#) and [the 1966 International Covenant on Civil and Political Rights](#). In theory, the right to a fair trial may be subject to derogation. However, as has already been stated [at the international level](#), access to justice should be respected

under any circumstance. The right of access to justice is even more important in emergency situations and should rather be strengthened in the event of disasters.

## **Conclusion**

The right of access to justice may play an important role, albeit indirectly, in reducing adverse impacts or risks of future disasters. A more global reflection on the future of justice, possibly “disaster justice”, at the international level is to be undertaken in this context (e.g. [the creation of an international tribunal/court for the environment](#)). As climate change will inevitably concern more and more people at the global level, international law urgently needs to prepare a solid framework for combatting climate-related disaster risks.

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